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**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION**

DONALD J. TRUMP, *et al.*,

Plaintiffs,

v.

META PLATFORMS, INC., *et al.*,

Defendants.

Case No: 3:21-cv-09044-WHA

**PLAINTIFFS' MOTION TO LIFT STAY
FOR LIMITED PURPOSE**

Judge: Hon. William H. Alsup

NO HEARING DATE REQUESTED

SUBMITTED FOR DECISION ON THE
PAPERS

I. INTRODUCTION

Plaintiffs Donald J. Trump, Elizabeth Albert, Kiyan and Bobby Michael, Jennifer Horton, Andres Cabos, Magalys Rios, and Maria Rodrigues-Fresneda (“Plaintiffs”) allege that members of Congress and the Executive Branch coerced, colluded with, and encouraged Defendants Meta Platforms, Inc. and Mark Zuckerberg to censor politically disfavored content on Defendants’ Facebook platform. The censored speech included content posted by former President Trump and the other Plaintiffs questioning the integrity of the 2020 presidential election or communicating information about COVID-19 that departed from Democrats’ preferred narratives, such as stating that the virus leaked from a Chinese laboratory or questioning the efficacy and safety of COVID-19 vaccines. Responding to government pressure, Defendants worked hand in glove with federal officials, including law enforcement agents, to ban and maintain prior restraints on this constitutionally protected speech. Plaintiffs alleged that Defendants’ conduct thus constituted state action and thus violated the First Amendment.

On August 3, 2022, the Hon. Jeffrey S. White issued an order (Dkt. 174) staying this case and striking the pending motions to dismiss the First Amended Complaint (“FAC”)¹ and for preliminary injunction, pending final resolution of the appeal in *Donald J. Trump, et al. v Twitter, Inc., et al.*, No. 22-15961 (Ninth Circuit Court of Appeals) (“*Twitter*”).² Since the *Twitter* appeal was filed and the stay order was entered, a wealth of new evidence directly supporting the claims pleaded here has been made public. Accordingly, Plaintiffs move the Court to lift the stay for the limited purpose of holding a Case Management Conference at which Plaintiffs will request the Court’s permission to bring a motion seeking leave to file a Second Amended Complaint.

II. SCHEDULING NOTE

Defendants Meta Platforms, Inc. and Mark Zuckerberg will oppose this motion. Intervenor the United States takes no position on the motion. Plaintiffs submit this motion on the

¹ Plaintiffs voluntarily amended their claims by filing the FAC before any motion to dismiss was heard. Dkt. 16.

² The *Twitter* case involves claims similar to those alleged here, although with some material differences. The *Twitter* appeal has been fully briefed; oral argument has been scheduled for October 4, 2023.

papers without requesting oral argument. The parties have agreed that Defendants' opposition brief will be filed on August 29, 2023 and Plaintiffs' reply brief, if any, will be filed on September 5, 2023.

III. GROUNDS FOR RELIEF

Dramatic events over the past year have made public a mountain of evidence directly supporting Plaintiffs' claims in this case.

- On July 27, 2022, America First Legal released documents obtained from the Center for Disease Control and Prevention ("CDC") detailing documented evidence of collusion in 2020 between the CDC and Facebook and other social media companies ("SMPs") to censor speech and promote the Biden Administration propaganda regarding COVID-19.
- Beginning in December 2022, Elon Musk publicly released extensive secret Twitter communications with dozens of federal officials. These "Twitter Files" showed that Executive Branch officials and federal law enforcement agencies worked hand in glove with SMPs, including Defendants, to suppress constitutionally protected speech on topics such as the COVID-19 lab-leak, the Hunter Biden laptop story, and election integrity.
- Defendant Mark Zuckerberg confirmed in a widely publicized Joe Rogan podcast that Facebook suppressed the NEW YORK POST story about the Hunter Biden laptop at the behest of the FBI. <https://www.youtube.com/watch?v=BN3PIGLDscQ>.
- Discovery in a landmark lawsuit brought by the Louisiana and Missouri Attorneys General against 67 government defendants revealed extensive evidence proving that multiple federal agencies coerced and collaborated with Defendants, along with other SMPs, to suppress politically disfavored information. *State of Missouri, et al., v. Joseph R. Biden, Jr., et al.*, No. 3:22-CV-01213 (W.D. La.). The District Court in that case recently issued a lengthy opinion exhaustively summarizing this evidence and

granting a preliminary injunction on the basis of that record. *Missouri v. Biden*, 2023 WL 4335270 (W.D. La. Jul. 4, 2023).

- Beginning on July 27, 2023, U.S. Representatives Jim Jordan and Doug LaMalfa posted a series of social media threads sharing what Rep. Jordan called “smoking-gun documents” subpoenaed by the House Judiciary Committee. These “Facebook Files” establish that Facebook censored politically disfavored speech due to what Rep. Jordan called “unconstitutional pressure from the Biden White House.”
https://twitter.com/jim_jordan/status/1684595375875760128 (Facebook Files, Part 1);
https://twitter.com/Jim_Jordan/status/1684957660515328001 (Facebook Files, Part 2);
https://twitter.com/Jim_Jordan/status/1687116316073930752 (Facebook Files, Part 3);
<https://twitter.com/RepLaMalfa/status/1689308359843860480> (Facebook Files, Part 4).

Because this case has been stayed, none of this new evidence is reflected in the operative complaint. It would be highly inefficient for the Court to hear a motion to dismiss directed at the FAC. Plaintiffs have already been subjected to significant delay in litigating their claims. Granting the requested relief would allow the case to move forward quickly once the *Twitter* appeal is concluded without the wasteful exercise of considering a motion to dismiss based on an outdated record.

Accordingly, Plaintiffs request that the Court hold a Case Management Conference at which Plaintiffs will seek leave to file a motion amend their complaint to include the copious new evidence available in the public record.

Dated: August 15, 2023

Respectfully submitted,

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By: /s/ Marie L. Fiala
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ATTORNEY ATTESTATION

I, Andrei D. Popovici, am the ECF user whose user ID and password are being used to file these documents, including Plaintiff's Motion to Lift Stay for Limited Purpose. Pursuant to N.D. Cal. Civil L.R. 5-1(h)(3), I attest that concurrence in the filing of these documents has been obtained from each of the other signatories.

Dated: August 15, 2023 /s/ Andrei D. Popovici

Andrei D. Popovici